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SUPREME COURT, U.S.
FILED
MAR 11 2004
OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

Record No: 03-947

VICTOR ALAN MOTLEY,
Petitioner,

v.

COMMONWEALTH OF VIRGINIA,
ex rel. VIRGINIA STATE BAR,
Respondent.

PETITION FOR REHEARING

PETITION FOR WRIT OF CERTIORARI

Victor Alan Motley, pro se
P.O. Box 25786
Richmond, VA 23260
(804) 329-6972

PARTIES TO THE PROCEEDING

Victor A. Motley, pro se, Petitioner

Peter R. Messitt, Senior Assistant Attorney General

Counsel for Respondent-Appellee

Solicitor General of the United States

28 U.S.C. Sec. 2403(a) may apply

PETITION FOR REHEARING

COMES NOW the petitioner, Victor Alan Motley, pro se, pursuant to Rule 44 of the Rules of the Supreme Court of the United States and for his Petition to Rehear says as follows:

Victor Alan Motley, pro se, filed a Petition for Writ of Certiorari on Dec. 29, 2003 which was docketed on Jan. 5, 2004.

Said Petition was DENIED Feb. 23, 2004.

This court's granting of certiorari with respect to the foreign, alleged terrorist being held in Gauntanamo Bay, Cuba is a intervening circumstance of a substantial and controlling effect on the Constitutional Rights at issue in Motley's Petition for Writ of Certiorari.

Both cases involve the right to be heard by a Court of Competent Jurisdiction if they are to be restrained/detained. The only difference in the issues regarding the foreign, alleged terrorist and Motley are that:

(a) National Security is not an issue with respect to Motley's right to be heard.

(b) Motley is a U.S. citizen, not a foreigner.

(c) Motley is not a prisoner of war.

To grant certiorari to the foreign, alleged terrorist is to give persons whom are National Security risks more rights than a law biding American citizen, whom happens to be an officer of the State and Federal Courts.

At issue is:

I. Whether the State Courts of Virginia had jurisdiction to hear Motley's Writs of Habeas Corpus filed therein pursuant to the U.S. Constitution, Art. I, Sec. 9; The Constitution of Virginia, Art. I, Sec. 9 and the Code of Virginia, Section 8.01-654?

II. Whether Motley was denied Due Process of Law and Equal Protection of the Law when the State Courts of Virginia DENIED Motley jurisdiction?

I. The U.S. Constitution provides:

The privilege of the Writ of Habeas Corpus shall not be suspended, unless when in case of rebellion or invasion, the public safety may require it. (Art. I, Sec. 9)

No person shall... be deprived of life, liberty or property without Due Process of Law. (Amendment XIV)

The Constitution of Virginia provides:

The privilege of the Writ of Habeas Corpus shall not be suspended unless when, in case of invasion or rebellion, the public safety may require. (Art. I, Sec. 9)

The Code of Virginia provides:

A Writ of Habeas Corpus ad Subjectendem shall be granted forthwith by any Circuit Court, to any person who shall apply for the same by petition, showing by affidavits or other undue probable cause to believe that he is detained without lawful authority. (Sec. 8.01-654)

Any Order of a Circuit Court denying a petition for Writ of Habeas Corpus shall include findings of fact and conclusions of law. The Order shall identify the substance of the claims asserted in the petition and state the specific reasons for denial of each claim. An Order shall not deny the petition without explanation. (Sec. 8.01-654(B)(5).

The Habeas Corpus Jurisdictional Statute implements the

constitutional command that the Writ of Habeas Corpus be made available. U.S. Constitution, Art. I, Sec.9. The only issue which Habeas Corpus presents is whether a person is restrained/detained of his liberty by due process. None of said restrictions/limitations/defenses to the granting of jurisdiction have been argued on the merits.

Victor Alan Motley's license to practice law has been purportedly reprimanded and suspended administratively without procedurally affording a hearing by a Court of Competent Jurisdiction. Victor A. Motley v. Virginia State Bar, Civil Action No. 3:01 CV 041 (USDC,ED VA 2001). (appendix a1).

The filing of the Writ of habeas Corpus is the only means by which Motley will receive a hearing by a Court of Competent Jurisdiction to adjudicate whether the detention/suspension of Motley's, and other similarly situated attorneys, state issued license was jeopardized with Due Process.

II. Victor Alan Motley has not been afforded the same rights as other state licensee's. To afford some state licensee's the right to a hearing before the respondent's life, liberty or

property can be jeopardized, but to deny other state licensee's the right to judicial review in a court of competent jurisdiction, violates the Equal Protection Clause of the U. S. Constitution, Amend. XIV.

To deny petitioner access to habeas Corpus relief would deny him or her protection of his or her liberty. N.Y.-State ex rel Henry L. v. Hawes, 174 Misc. 2d 929, 667 NYS 2d 212 (County Ct. 1997). State may not, under guise of prohibiting professional misconduct, ignore Constitutional Rights. NAACP v. Button, 371 U.S. 415, 83 S.Ct. 328(1963).

This Court has never addressed the issue of whether the State Courts or Federal Courts have jurisdiction to address conclusions of State Agencies when the respondent is denied access to the Courts. Of what good are Constitutional Rights, if a U.S. citizen can be legally denied the right to be heard by a court of competent jurisdiction?

Rules of the Supreme Court of the United States, Rule 10(c) states certiorari should be granted when: " a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled

by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court".

Motley has no criminal record, has not been found to have defrauded anyone, has not misappropriated anything, no court has ever found any of Motley's clients documents to be in error; Motley is just being restrained/detained with no access to the courts for review.

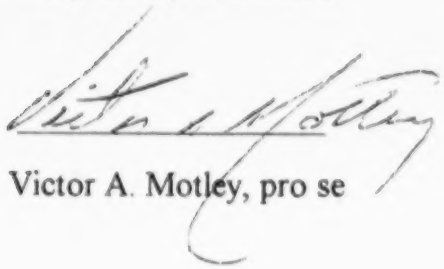
The merits of the claims are not at issue, the only issue is Motley's right to be heard by a court of competent jurisdiction. No court has put in writing why Motley is being denied jurisdiction. Why? To deny jurisdiction is to deny the RIGHT.

CONCLUSION

Access to the courts is the issue in both matters; Motley's Petition and the case of the foreign, alleged terrorist in Gauntanamo Bay, Cuba.. The granting of certiorari in this matter will allow the Court to better evaluate and distinguish the issues.

WHEREFORE, Victor Alan Motley, prays that this Court reconsider and rehear Motley's Petition for Writ of Certiorari.

Respectfully Submitted,

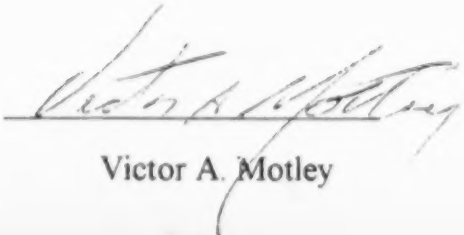


Victor A. Motley, pro se

CERTIFICATE OF SERVICE

I, Victor A. Motley, P.O. Box 25786, Richmond, VA 23260, (804)329-6972 hereby certify that a true copy of the foregoing Petition for Rehearing (3 copies) was mailed, postage prepaid, to the Office of the Attorney General, c/o Peter R. Messitt, Senior Assistant Attorney General at 900 E. Main St. Richmond, VA 23219 and in that 28 U.S.C. Sec. 2403(a) may apply, three copies (3) copies of this Petition and the Petition for Writ of Certiorari was mailed, postage prepaid to the Solicitor General of the United States, Room 5614, Department of Justice, 950 Pennsylvania Ave. NW, Washington, DC 20530-0001 this 10th day of March, 2004.

this Petition for rehearing is restricted to the grounds specified herein and is presented in good faith and not for delay.



Victor A. Motley

STATE OF VIRGINIA;

CITY OF RICHMOND;

The foregoing CERTIFICATE OF SERVICE was subscribed, sworn and acknowledged before me a Notary Public in and for the City of Richmond, State of Virginia by Victor A. Motley this 11th day of March, 2004.

My Commission expires: July 31, 2004

Notary Public

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

VICTOR A. MOTLEY,

Petitioner

v. Civil Action Number 3:01CV41

JOSEPH A. CONDO and

VIRGINIA STATE BAR,

Respondents.

FINAL ORDER

This matter is before the Court on a petition for writ of habeas corpus filed by petitioner. He seeks relief from an Order entered by the Virginia Supreme Court in Record No. 000417 which purportedly affirmed an order of the Virginia State Bar Disciplinary Board upholding findings upon which the petitioner's license to practice law was suspended for eighteen months.(1) Petitioner does not allege that he is "in custody in violation of the Constitution or laws or treaties of the United States" as required in order to seek relief pursuant to 28 U.S.C. Sec. 2254. Petitioner claims only that the decision of the Virginia Supreme Court is "a restraint on petitioner's liberty as defined in Jones v. Cunningham, 371 U.S. 236(1963)." Recently, the United States Supreme Court

stated that although the writ of habeas corpus demands "application of basic constitutional doctrines of fairness (citing Jones v. Cunningham)," it also stated that the writ "demands...conviction by a court of competent jurisdiction (citations omitted)." Lonchar v. Thomas, 517 U.S. 314,322 (1996). Since the petitioner does not allege a conviction by a court of competent jurisdiction, this petition is DISMISSED FOR LACK OF JURISDICTION.

Petitioner is advised that he has the right to appeal the decision of the Court. Should he wish to do so, written notice of appeal must be filed with the Clerk of the Court within thirty (30) days of the date of entry hereof. Failure to file a timely notice of appeal may result in the right to appeal.

It is so ORDERED.

Let the Clerk send a copy of this Order to all counsel of record and to Mr. Motley.

Jan. 23, 2001 _____

DATE SENIOR U.S. DISTRICT JUDGE

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1. Two similar petitions were filed on the same date, each also seeking relief from orders issued by the Virginia Supreme Court, both of which issued a public reprimand, in Records

Number 000392 and Number 001306. Those petitions were assigned Civil action Numbers 3:01CV040 and 3:01CV042 respectively.